

BASE MODEL CONTRACT - INSTRUCTIONS

I. Introduction

The Base Model Contract is not required, but is provided as convenient and acceptable (per s.46.036 Wis. Stats.) contract language. It is the responsibility of the contracting parties, and in particular the purchaser, to comply with the provisions of s.46.036. Counties may use the suggested wording, but are expected to consult with their county legal counsel to ensure compliance.

Section 46.036 Wis.. Stats. specifies that all care and services purchased by a county or multicounty social or human services department, department of community programs, or department of developmental disabilities services, (henceforth referred to as county agencies) shall meet standards established by the Department. Statutes also provide that, with some exceptions, this purchased care and service must be authorized and contracted for under these standards.

When a contract is required for the "purchase of care and services" (hereafter referred to as "contract"), this is interpreted to mean only the care and services provided to clients. The state Department of Health and Social Services (hereafter referred to as the Department) considers the contracting practice as good business practice which, if properly executed, protects both the Purchaser and the Provider. Therefore, county agencies are encouraged to also contract for non-client related items such as office supplies, computer charges, waste disposal, etc..

The language used in the model Agreement for the Delivery of Employment and Training Services (i.e., JOBS Addendum) has been carefully developed to meet the specific and unique needs of the JOBS Program. Many agencies by virtue of agency charter, unique county ordinance, or unusual provision placed on the agency by board action or other bonafide legal provision may require local additions to the model language. So long as the local language does not conflict or otherwise render the model contract provisions meaningless, the Department generally will accept these additions. Apart from these required additions, changes in model contract language should be kept to a minimum, except where options or additions are clearly indicated in the model contract.

II. When Contracts Are Not Required

While contracts are a good business practice, and are recommended by the Department, county agencies are not always required to enter into such contracts. Statutes permit certain care and services to be purchased without benefit of a contract. In other instances, the requirement for a written contract may be waived by the Department. Instances in which contracts are not required are as follows:

- A. No contract is required for care provided by foster homes required to be licensed under s.48.62 Wis. Stats.;
- B. No contract is required when a provider under contract with a county agency obtains services from another vendor. The county agency should, however, ensure that the name of the vendor and the "ancillary service" being so obtained is on file with the appropriate

division's regional or central office.

- C. No contract is required when care and services are being provided via a voucher directly to a client (See Section VI G and H for details);
- D. No contract is required, as part of the DCS Family Support Program, between a family and the county agency;
- E. No contract is required for placement in a Community Based Residential Facility (CBRF) when that facility is owned or operated by the county making the placement.
- F. A county agency's contract with a funding agency may impose conditions on its subsequent contract with a provider agency (e.g., DILHR's approval is needed for a county to contract with a provider using funds it receives under the county agency's JOBS contract with DILHR).
- G. The county Title IVA agency shall not contract for the following AFDC-related child care administrative functions:
 - 1. Eligibility determination,
 - 2. Denial or termination of child care,
 - 3. Determination of co-payments,
 - 4. Determination of whether there is a dependent child in need of child care in order for the caretaker to work or participate in JOBS.
- H. The requirement for a written contract may be waived by the Department's authorizing authority (see Section IV below) as follows:
 - 1. For purchases of \$10,000 or less;
 - 2. Placement of a child in a group home when another county agency is the sponsoring agency (i.e., DSS, HSD). A placement agreement is sufficient in this case. (However, a contract with a sponsoring agency is required for group homes licensed under s.48.625). See Section VI K for more detail.
 - 3. Unanticipated client-specific services provided on an emergency or one-time basis. (In most instances, the initial authorization is given orally, but must later be confirmed in writing. These instances are to be clearly differentiated from the provision of a service (e.g., sheltered work) which, although unanticipated, still requires a contract).

III. Model Contract

The Department is authorized under s.46.036(3) to promulgate procedures for the writing of service contracts. The Department has developed a Model Contract (attached) which may be used by county agencies. This model was developed to promote good contracting practices, ensure that the provided care and services meet standards, and ensure that county contracts with providers are consistent with the terms and conditions set forth in the "State/County Contract Covering the Administration of Income Maintenance Programs, Social and Mental Hygiene Services Programs, Community Youth and Family Aids Programs, Child and Spousal Support, Establishment of Paternity Program, and Medical Support Liability." Also, attached as addenda to the model contract are requirements unique to the county's JOBS program and a Contract Summary Sheet. Use of the Contract Summary Sheet is required only for Social and Mental Hygiene Service Programs.

The following modifications to the model contract are required for contracts with hospitals:

- A. Section IV of the model contract should be replaced by a statement to the effect that the hospital will charge the "usual and customary rate" or maximum rate, whichever is less, for its services.
- B. The following sections of the model contract are not required when entering into agreements with general hospitals:
 - 1. Requirements for an annual audit (Section XIII)
 - 2. Uniform fee procedures (Section IVA)
 - 3. Double entry accounting systems (Section XIIC)
 - 4. Transfer of clients between categories of service (Section XIID)
 - 5. Indemnity and Insurance (Section VI)

Use of the model contract is not required. However, use of the model contract will help ensure that contracts meet Department requirements. As a minimum, contracts to be authorized by the Department must contain provisions found in the model contract and its addenda.

The Department encourages other public and private entities with which it contracts for care to make use of the model contract and its provisions when obtaining that care and service by contracting with providers. Non-county JOBS agencies, in particular, need to address the requirements in the JOBS addendum to the model contract when contracting with providers.

IV. Submission, Review, and Approval

All contracts entered into by county agencies (as well as requests for contract waivers) will be reviewed and approved by the appropriate division of the Department. For programs administered by the Divisions of Community Services (DCS) and Economic Support (DES), review and approval has been delegated to the appropriate regional office. For programs administered by the Division of Youth Services (DYS), review and approval is provided by central office. The procedures for state processing of these contracts are described below:

- A. JOBS Contracts for Employment Services

All JOBS contracts which county agencies have with outside providers must be reviewed and approved by the DES regional office as a condition for reimbursement unless such contracts are exempt under the provisions found in II above.

1. Submission

Regional office staff will secure copies of all JOBS subcontracts in excess of \$10,000 per annum executed by JOBS administrative agencies, except where the state Department of Industry, Labor and Human Relations (DILHR) or a tribal agency is serving as the administrative agency. (Note: The JOBS addendum to the state/county IM contract and JOBS agreements with non-county agencies require that copies of subcontracts be submitted to DHSS. This provision was not included in the grant agreement with DILHR. Tribal subcontracts will be handled by the Tribal Affairs unit in Central Office.)

2. Review

Contracts must be reviewed by regional staff for compliance with the following:

- a. That the contract has been properly signed by the parties not more than 30 days following the effective date of the contract.
- b. That JOBS funding is appropriate for the services being purchased and that the services were included in the JOBS plan.
- c. That contracts for client services show the total dollar amount for each service being purchased, the number of clients to be served, and if applicable, the number of client service units.
- d. That if advance payments are made in excess of \$10,000 per month, the contractor will provide a surety bond sufficient to cover the amount of the advance.
- e. That the contractor will furnish the purchaser a certified financial and compliance audit report, or federal single audit report when appropriate, unless waived by regional staff. (Note: DILHR and tribal agencies are exempt from this requirement. Job Training Partnership Act (JTPA)/Private Industry Council (PIC) and Community Action Program (CAP) agencies are not exempt. They are subject to the federal single audit and should be required to furnish a copy of the single audit.)

3. Notification

- a. Regional staff must send a letter to the administrative agency indicating that the contract has been reviewed and meets the minimum requirements above. If a contract does not meet the requirements, the letter must give the reason(s) and state what must be done in order for the contract to be approved.
- b. If an administrative agency disagrees with a regional decision, it may request a review by the Director, Bureau of Field Operations, Division of Economic Support, P.O. Box 7935, Madison, Wisconsin 53707-7935.

B. Other Purchase Contracts

1. Submission

If the local agency uses the model contract format or an adaptation of the model contract (which has been reviewed by the regional office) in all cases, then DCS requires that only the signature page of the contract, along with the Contract Summary Sheet (DCS-978 form), be submitted (both at time contract is initiated and when a modification is made to the contract). This is intended to lessen the administrative burden for state and county staff where only standard contract language is used. Local agencies are to submit one copy (the appropriate regional or central office may request additional copies) of completed contracts with service providers. The Contract Summary Sheet for specific contracted services is to be submitted to the appropriate DCS regional office.

The Divisions will accept contracts signed by both parties within 30 days of the effective date of the contract. In those cases where a contract cannot be executed within this requirement, the parties could extend an existing contract, with regional office approval, until the new contract can be completed. The Division will not consider new or renegotiated contracts after the date specified in the State/County Contract by which all costs must be claimed for reimbursement.

2. Review

There is a limited state review function which is intended to assure that the identified funding is appropriate for the service being purchased, that the vendor is eligible to receive state funding, and the purchase agreement was executed in a timely manner. County agencies will be solely responsible for the language of the contract and compliance with s.46.036. In subsequent Department audits, the Division's contract approval will only stipulate that the services were being purchased with appropriate funds and that the vendor was certified or licensed as required. It is the responsibility of the local agency and the vendor to actually obtain licenses or certification if they are necessary. As part of its review, the regional office (or DYS Central Office) will:

- a. Review contract or (for DCS only) the Contract Summary Sheet to ensure that:
 - vendor is certified or licensed as necessary; and
 - the contract was completed and received by the regional or central office for review within 30 days of the effective date of the contract.
- b. Determine whether the contract was signed by both parties and submitted to the regional office within 30 days of the effective date of the contract.
- c. Review the dollars, clients and service units to be purchased. The appropriate division's regional office or central office will determine whether the funding source is appropriate for the service being purchased. (This includes a review of the contract level.)
- d. Review and approve all revisions to previously approved contracts and send a revised Contract Summary Sheet (DCS only) to the DCS Bureau of Management and Operations (BMO).
- e. Maintain a by-vendor listing to show specifically the vendors covered by regional office or central office contract waivers.

3. Notification

The end result of the review process is a letter of approval or denial from the appropriate regional office or central office. For subsequent audit purposes, each service purchased by the local agency should be covered by written regional office or central office approval of: 1) the contract; or, 2) a contract waiver.

For DCS, Area Administrators will send a letter to each agency approving the contracts listed on the Contract Summary Sheet. Exceptions to the approval will be noted in the letter along with any required agency action. Copies of the approved contract summary sheets will be attached to the approval letters. Area Administrators will send a copy of the approval letters and attachments to Denise Kapler in BMO.

Local agencies may appeal a regional office (or DYS Central Office) denial to the appropriate Administrator's office.

If the information shown on the original Contract Summary Sheet is changed as a result of contract renegotiation, a new Contract Summary Sheet must be submitted to the DCS regional office.

V. Audit Requirements

- A. Under Wis. Stats. s.46.036(4)(C), the provider must furnish the purchaser with an annual

audit for purchases exceeding \$25,000 unless waived by the Department. (See audit waiver criteria below.) For contracts under \$25,000, an audit is not required. As a result, the Purchaser does not need a waiver from the Department. However, the Purchaser may require an audit, at its discretion, for contracts at any dollar level even if the statutes do not require an audit.

Audits shall be conducted and reports submitted in accordance with applicable state and federal regulations and guidelines and professional standards, including, but not limited to: OMB Circular A-133, OMB Circular A-128, the Department's *Provider Agency Audit Guide*, the Department's *Allowable Cost Policy Manual*, Section 46.036 of the Wisconsin Statutes, the *State Single Audit Guidelines*, *Government Auditing Standards*, and Generally Accepted Auditing Standards.

B. Non-Profit Organizations

The audit requirement for non-profit organizations covered by OMB Circular A-133 is based on the amount of federal funding received. The funding levels that determine the type of audit required are:

- Non-profit institutions that receive \$100,000 or more a year in federal awards shall have an audit made in accordance with the provisions of OMB Circular A-133. However, non-profit institutions receiving \$100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the circular or having an audit made of the one program.
- Non-profit institutions that receive at least \$25,000 but less than \$100,000 a year in federal awards shall have an audit made in accordance with OMB Circular A-133 or have an audit made of each federal award, in accordance with federal laws and regulations governing the programs in which they participate.
- Non-profit institutions receiving less than \$25,000 a year in federal awards are exempt from federal audit requirements, but records must be available for review by appropriate officials of the federal grantor agency or subgranting entity. While the federal audit requirement exempts audits for awards under \$25,000, the county and/or state may require a financial and compliance audit, or said requirement may be waived.

C. Audit Waivers

Local agencies must request any waiver of the audit requirements from the appropriate office (regional office in the case of agencies contracting with the Divisions of Community Services and Economic Support and the central office in the case of agencies contracting with the Division of Youth Services). If it is determined by regional office or central office staff that an audit is not appropriate, a waiver may be granted. Staff must document the reason for granting any waivers. A waiver can be given for one year only.

Requests for a waiver will be evaluated individually against the following general criteria:

- If the cost of an audit exceeds five percent (5%) of the total contract (as verified by written bid), an alternate year audit schedule that covers both years may be approved.
- For larger corporations, for which the local agency business constitutes only a small part of the business of the parent corporation, a current corporate certified audit report and a statement of revenues and expenses for the contracted services may be accepted in lieu of a certified audit of the contracted services.
- If it is determined that an audit would not be cost effective, or would otherwise place an undue burden upon the vendor, staff of the appropriate regional office or central office may waive the audit requirement. Staff must document the specific circumstances which support the granting of a waiver and indicate an alternate form of financial monitoring which will be substituted for an audit.
- The audit requirement for county contracts with the Department of Industry, Labor, and Human Relations (DILHR) has been waived. The DILHR single audit is performed by the State Legislative Audit Bureau. Therefore, there is no need to require a separate copy of the audit report from DILHR when a county contracts with DILHR to operate an employment related program. (Private Industry Council Administrative Entities and Community Action Agencies are not exempt. They are subject to the Federal Single Audit Act and should be required to furnish a copy of the single audit.)

VI. DCS Contract Policies

The issues discussed below have, over the years, regularly generated questions or requests for clarification. For this reason, these specific contract policies are restated here. Other issues that generate substantial inquiries will be addressed in this section of the instructions in the future.

- A. Under s.46.036(1), Wis. Stats., a contract is not required for care provided by foster homes licensed under s.48.62. However, a contract is still required for group homes licensed under s.48.625. In addition, there is a state waiver of the contract requirement for the Family Support Program. A contract will not be required between the family and county agency. The county is required only to allow purchases and/or services which are listed in the Family Support addendum to the State/County Contract and are part of the Individual (family) Case Plan.
- B. The Division recognizes that vendors with multiple service facilities represent a unique situation. There are several circumstances where this situation may occur but the most prevalent example is the corporation that operates several group homes. In these cases, if the county agency makes direct payment to the central corporate entity for services at several service sites or facilities, there must be a single contract with the central corporate

body covering all the services or facilities. If, however, payment is made individually to the various service vendors or facilities, then the need for a contract would be determined on an individual basis per the requirement of this memo.

- C. Either the vendor or the vendor's authorized representative must sign the contract for the vendor agency. If the application of this general rule is unclear in a particular case, the county agency will need to seek advice from its legal counsel.
- D. Small residential care providers such as family group homes and adult family homes are allowed to utilize the simplified accounting system issued by the Department of Health and Social Services several years ago. The simplified system may be adopted in lieu of the accounting requirements detailed in the Department's Accounting and *Allowable Cost Policy Manual*. The contract between the family group home and the county agency must specify the accounting system which will be used by the group home.

The county, rather than the state, has the authority to grant a waiver to the statutory requirement that vendors provide a financial and compliance audit to the county agency. The DCS regional office must approve all other waivers of the audit requirements.

- E. Due to variations between counties reporting on the Human Services Reporting System (HSRS), county agencies may complete purchase contracts in either Standard Program Categories or Standard Program Clusters (see HSRS Handbook).
- F. The purchase of service contract must specify the anticipated absenteeism rate (based on either actual experienced absenteeism or estimated absenteeism), but the rate cannot exceed 20%. Note: The absenteeism rate is defined as the rate the overall purchase clientele is expected to be absent at the scheduled time without prior planning. This rate may be estimated based on monthly, quarterly, or annual experience. The county agency must reduce its payments to the extent this overall rate is exceeded.
- G. The Division has established a separate policy concerning the ability of county agencies to utilize client vouchers for CBRF services. The policy is that individual client vouchers cannot be used in lieu of formal contracts for CBRF services. Because the CBRF clientele are a dependent population, the client's choice of provider should be considered at the time the service plan is developed. The statutes specifically provide for the use of vouchers in the case of day care services.
- H. Direct cash payments are not made to parents for day care under HSS 55.73(6). When day care is provided via a voucher to a client, a contract is not necessary even if reimbursement to a provider exceeds \$10,000 in a one year period. Because no contract is required, there are no audit requirements when day care is provided via vouchers as established in s. HSS 55.73(6). Regardless of the method of payment, clients may use only licensed or certified providers, or day care programs established and provided by a school board, whether the provider has a contract with the Department of Social Services/Human Services Department or the day care is provided via voucher. The intention of HSS 55 and DCS Memo series 86-43 (Day Care Handbook) is that the voucher payment be made directly to the vendor.

- I. Beginning with a "contract period commencing after 1986 and if a residential provider and purchaser renew the contract," both group homes and CBRF's will be able to retain a certain amount of excess revenue. Under s.46.036(5m)(a), Wis. Stats., a group home under s.48.02(7) or a CBRF under s.50.01(1) may:

1. Retain up to 5% of the contract amount, but not more than \$3,000 of excess revenue (revenue over allowable costs), at its own discretion to cover a deficit in any future contract period;
2. Retain up to \$2,000 in excess revenue, in addition to the amount in "1" above and subject to the agreement of the provider agency to cover a deficit in the next succeeding contract period.

The total amount retained by a group home or CBRF cannot exceed 5% of the contract that is in effect for the period under audit or \$5,000, whichever is less. A final provision allows for the retention of up to 5% of the contract amount, but not more than \$3,000 in excess revenue to cover a deficit in the immediately preceding contract period, at the discretion of the group home or CBRF. It is not permissible to budget for excess revenue in a current year contract.

- J. Section 46.036 of the Wisconsin Statutes requires that all care and services purchased shall meet standards established by the Department.

Some providers must, therefore, be certified or licensed as meeting standards established by the Department. The licensing or certification status of a provider may be obtained through the DCS Regional Office Direct Services and Regulation Section or the Certification Unit in the Bureau of Program Quality Assurance. County agencies are expected to verify that the vendor is licensed or certified as required.

- K. Waivers of contracts for group home services must take into account two factors: the level of the contract and the status of the sponsoring agency.

The sponsoring agency, which is defined as either a Department of Social Services/Human Services Department of a private licensed child placing agency, must have a contract with the group home. Other counties wishing to place individuals in that group home must go through the sponsoring agency. There is no need to have a contract for each child placed in a group home when a Department of Social Services is the sponsoring agency. A placement agreement is sufficient in this case. However, when the sponsoring agency is a private licensed child placing agency, each county agency placing a child must have a contract with the child placing agency (i.e., the sponsoring agency). For all corporate group homes, there must also be a sponsoring agency which has a contract with the home and handles the placements.